

**INTERLOCAL AGREEMENT
CITY OF EDMONDS AND OLYMPIC VIEW WATER AND SEWER DISTRICT
2015 WATER MAIN REPLACEMENT PROJECT**

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into by and between the City of Edmonds, Washington (the "City") and Olympic View Water and Sewer District (the "District") (collectively, the "Parties") as of the date entered below.

WHEREAS, Chapter 39.34 RCW authorizes two or more political subdivisions or units of local government of the State of Washington to cooperate on a basis of mutual advantage to provide for services and facilities;

WHEREAS, the District is currently constructing a capital improvement project known as the 2015 Water Main Replacement Project (the "Project");

WHEREAS, the District plans to replace in present alignment or by parallel construction (hereafter "replacement") certain water utilities within the limits of the Project;

WHEREAS, the District (or District's Contractor?) secured City Permit No. ENG20150453 (the "Permit") to work within City's 102nd Ave W street right of way;

WHEREAS, the Project will replace the District's existing water main and appurtenances in 102nd Ave W;

WHEREAS, the Project will require a half width pavement overlay on 102nd Ave W from 238th St. SW south to the end of the street;

WHEREAS, the City desires to expand District's half-width pavement overlay to a full width pavement grind and overlay of 102nd Ave W within the limits of Project;

WHEREAS, a full width pavement grind and overlay of 102nd Ave W will provide a more durable pavement section;

WHEREAS, adding the full width pavement grind and overlay work to District's Project will minimize the disruption to residents on 102nd Ave W;

WHEREAS, the Parties agree to share the cost of the pavement grind and overlay on 102nd Ave W and establish a formal arrangement under which the City will pay the District in exchange for the District incorporating the City's pavement overlay work into the Project;

WHEREAS, the Parties desire to enter into this Agreement for the purpose of defining their respective rights, obligations, costs and liabilities regarding this undertaking;

WHEREAS, the City Council of the City of Edmonds has taken appropriate action to approve the City's entry into this Agreement;

WHEREAS, the Board of Commissioners of the District has taken appropriate action to approve the District's entry into this Agreement;

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NOW, THEREFORE, in consideration of the terms, conditions and covenants contained herein, the City and the District agree as follows:

TERMS

Section 1. Purpose. The purpose of this Agreement is to establish a formal arrangement under which the City will pay the District to incorporate the overlay work into the Project and to construct said work in conjunction with the District's construction of the Project. The terms, conditions and covenants of this Agreement shall accordingly be interpreted to advance this purpose. This Agreement further seeks to allocate and define the Parties' respective rights, obligations, costs and liabilities concerning the establishment, operation and maintenance of this undertaking.

Section 2. Term. This Agreement shall be effective upon its execution by the Parties hereto. Unless terminated in accordance with Section 3, this Agreement shall remain effective until the sooner of the following events: (a) the City's written acceptance of and payment for the District overlay work provided to the City pursuant to this Agreement, or (b) December 31, 2016, when it shall expire automatically. The Parties may at their option renew this Agreement for a mutually agreed upon term by a writing signed by both Parties.

Section 3. Termination. Either Party may terminate this Agreement with or without cause by providing the other Party with thirty (30) days' written notice of its intent to terminate. Termination or expiration shall not alter the City's payment obligations under Section 6 for services already rendered, as well as for the normal and reasonable costs incurred by the contractor in terminating and closing out the City's portion of the work, and shall not alter the Parties' respective obligations under Section 10 of this Agreement.

Section 4. Obligations of the City. The City agrees to:

- A. Reimburse the District for all actual costs related to the pavement overlay in accordance with the terms of Section 6 of this agreement.
- B. The City shall reimburse the District for the City's prorated share of the District's actual consultant cost for construction engineering, inspection, and management of the pavement grind and overlay work. The City share shall be 50% of District's actual consultant costs for construction engineering and management, not to exceed \$1,500.00 without prior approval by City, which approval shall not be unreasonably withheld.
- C. Respond promptly to information requests submitted by the District or its agents regarding the pavement grind and overlay work.
- D. Provide written acceptance of the work to the District upon satisfactory completion of the pavement grind and overlay work.

Section 5. Obligations of the District. The District agrees to:

- A. Incorporate the full width pavement grind and overlay work into project documents by change order.
- B. Submit to the City written invoices for payment in accordance with Section 6. Include copies of invoices or other documentation from consultants and/or contractors clearly indicating the City's portion of the invoices.
- C. Provide City personnel reasonable access to the Project's construction area for purposes of inspecting and monitoring the progress of the work.

- D. Respond promptly to information requests submitted by the City or its agents regarding the Project.

Section 6. Payment Schedule. The Parties agree to the following billing and payment schedule:

- A. For construction contract costs and for construction engineering and management costs incurred by the District for City's pavement grind and overlay work, the District shall within thirty (30) days submit an invoice to the City for the City's share of said expenses for the pavement grind and overlay. Said invoice shall contain a reasonably detailed explanation of the methodology utilized by the District in determining the City's share of each expense. To the extent reasonably possible, the District shall document and tabulate separately the actual quantities of work installed to clearly identify the City's cost for the pavement grind and overlay work.
- B. Within thirty (30) days of receiving any invoice pursuant to subsection 6.A, the City shall tender payment to the District in the form of a check, money order or other certified funds for the invoiced amount for work approved by the City, which approval shall not be unreasonably withheld.
- C. In the event that the Parties disagree regarding the City's share of any expense incurred by the District regarding the Project, the Parties may agree to submit the question for resolution by a mediator or arbitrator acceptable to both Parties.

Section 7. Ownership and Disposition of Property. The pavement grind and overlay work done pursuant to this Agreement shall become and remain the exclusive property of the City upon completion. All other work constructed under the Project shall become and remain the exclusive property of the District upon completion.

Section 8. Administration. No Separate Entity Created. The General Manager for the District shall serve as the administrator of this Agreement. No separate legal entity is formed by this Agreement.

Section 9. Release, Indemnification and Hold Harmless Agreement. Each Party to this Agreement shall be responsible for its own negligent and/or wrongful acts or omissions, and those of its own agents, employees, representatives, contractors or subcontractors, to the fullest extent required by the laws of the State of Washington. Each Party agrees to protect, indemnify and save the other Party harmless from and against any and all such liability for injury or damage to the other Party or the other Party's property, and also from and against all claims, demands and causes of action of every kind and character arising directly or indirectly, or in any way incident to, in connection with, or arising out of work performed under the terms hereof, caused by its own fault or that of its agents, employees, representatives, contractors or subcontractors.

The District specifically promises to indemnify the City against claims or suits brought under Title 51 RCW by its own employees, contractors or subcontractors, and waives any immunity that the District may have under that title with respect to, but only to, the limited extent necessary to indemnify the City.

Section 10. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Washington. Any action arising out of this Agreement shall be brought in Snohomish County Superior Court.

Section 11. No Employment Relationship Created. The Parties agree that nothing in this Agreement shall be construed to create an employment relationship between the City and any employee, agent, representative or contractor of the District, or between the District and any employee, agent, representative or contractor of the City.

Section 12. No Third Party Rights. This Agreement is intended for the sole and exclusive benefit of the Parties hereto and no third party rights are created by this Agreement.

Section 13. Notices. Notices to the District shall be sent to the following address:

**Olympic View Water and Sewer District
General Manager
8128 228th St SW
Edmonds, WA 98026**

Notices to the City shall be sent to the following address:

**City of Edmonds
City Engineer
121 Fifth Avenue N
Edmonds, WA 98020**

Section 14. Duty to File Agreement with County Auditor. The District shall, after this Agreement is executed by both Parties, file this Agreement with the Snohomish County Auditor.

Section 15. Integration. This document constitutes the entire embodiment of the Agreement between the Parties and, unless modified in writing by an amendment to this Interlocal Agreement signed by the Parties hereto, shall be implemented as described above.

Section 16. Non-Waiver. Waiver by any Party of any of the provisions contained within this Agreement, including but not limited to any performance deadline, shall not be construed as a waiver of any other provision.

CITY OF EDMONDS

By: David O. Earling 3/23/16
DAVID O. EARLING Date
Mayor

OYMPIC VIEW WATER & SEWER DISTRICT

By: John E. Elsasser 3/7/2016
John E. Elsasser Date
President, Board of Commissioners

Approved as to form only:

Sharon Catta
City of Edmonds Date
Office of the City Attorney